

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application for Order Authorizing Suburban
Water Systems (U339W) to Purchase Sativa
County Water District's Assets and for
Related Approvals.

Application 21-08-011
(Filed August 13, 2017)

**SUBURBAN WATER SYSTEMS
APPLICATION FOR REHEARING OF DECISION 22-04-010**

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I. INTRODUCTION

In accordance with Rule 16.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Commission Rules"), Suburban Water Systems ("Suburban") respectfully submits this application for rehearing of Decision ("D.") 22-04-010. In D.22-04-010, the Commission approved Suburban's purchase of Sativa Los Angeles County Water District ("Sativa Water") and all of its assets.¹ Suburban appreciates the Commission's timely approval of this transaction, as well as the Commission's recognition of the transaction's significant benefits.²

In particular, Suburban appreciates the Commission's swift action to approve this transaction to remedy the poor management and historically poor water quality and water service that had plagued Sativa Water's customers. The transaction will bring greater economies of scale, and greater resources and expertise, to the management and operation of Sativa Water. The Commission's prompt approval of the above-referenced application ensures Sativa Water customers' long-term access to safe and reliable water services at affordable prices. Suburban is proceeding with the transaction as approved.³

¹ D.22-04-010, *Application for Order Authorizing Suburban Water Systems (U339W) to Purchase Sativa County Water District's Assets and for Related Approvals*, Decision Authorizing the Purchase of Sativa Los Angeles County Water District by Suburban Water Systems, p. 42, Ordering Paragraph 1.

² *Id.*, pp. 10-14.

³ Under the Commission's Rules, an application for rehearing does not suspend the decision. (Rule 16.1(b).) Suburban is not seeking a suspension, and does not believe a suspension would be appropriate.

Suburban files this application for rehearing of the issue of Suburban's request to track for recovery all past and future costs associated with this transaction in the Sativa Transaction Cost Memorandum Account ("STMA"). By establishing the application date as the effective date of the STMA, the Commission has denied Suburban the ability to recover the vast majority of the costs that it incurred in connection with this transaction, including costs incurred to comply with Commission requirements. This creates a disincentive for Suburban and other water utilities to undertake similar beneficial transactions in the future, which would be contrary to Commission and State policy goals.⁴

Suburban respectfully requests that the Commission set aside the portion of the Decision denying Suburban the opportunity to track transaction costs incurred prior to the date it filed the underlying application. In its place, Suburban respectfully respects that the Commission approve Suburban's tracking of all transaction costs without limitation. As discussed in more detail below, the Commission's authority, precedent, and policy reasons support that outcome.

II. COMMISSION AUTHORITY, PRECEDENT, AND PUBLIC POLICY ALL SUPPORT THE COMMISSION ALLOWING SUBURBAN TO TRACK ALL OF ITS TRANSACTION COSTS FOR ITS ACQUISITION OF SATIVA WATER IN A MEMORANDUM ACCOUNT

In D.22-04-010, the Commission erred by prohibiting Suburban from tracking transaction costs incurred before it filed its application for future recovery. Specifically, the Commission erred because: (1) Suburban incurred these costs to comply with Commission

because it would delay Sativa Water's customers from receiving the significant benefits associated with the transaction.

⁴ The Commission waived the comment period on the proposed decision, citing Public Utilities Code §311(g)(2) and Commission Rule 14.6 (c)(2), stating that the matter was uncontested and that the decision granted the relief requested. (D.22-04-010, p. 38.) While the Commission correctly noted that this matter is uncontested, the statement that the decision grants the relief requested is incorrect. Suburban filed a motion to reinstate the 30-day period for review and comment and for leave to file comments on the proposed decision. The assigned Administrative Law Judge denied this motion with no explanation. By waiving the comment period on the proposed decision in violation of the Public Utilities Code and the Commission's Rules of Practice and Procedure, the Commission denied Suburban the opportunity to address the Commission's error with respect to Suburban's transaction costs.

requirements for acquisition applications, (2) Suburban incurred the vast majority of its transaction costs before it filed its application, (3) all of Suburban's transaction costs, not just the costs incurred after filing the application, meet the Commission's criteria for memorandum accounts, (4) the Commission has the authority to allow Suburban to track all of its transaction costs for future recovery, and has done so previously, and (5) denying Suburban the opportunity to recover the majority of the costs associated with this beneficial transaction is contrary to public policy goals.

A. Suburban Incurred Transaction Costs to Comply with Commission Requirements

In D.99-10-064, the Commission approved a settlement establishing the terms and conditions for mergers and acquisitions of water utilities.⁵ Under the settlement, applicants are required to provide an appraisal of the system to be purchased, together with supporting materials and workpapers.⁶ The appraisal must include the value of the land and cost of replacing the existing improvements, less accumulated depreciation.⁷ The settlement noted that the "complexity and detail required will necessarily vary based on the size and price of the acquired water system."⁸ More recently, in D.20-08-047, the Commission adopted a lengthy list of additional information and documentation that applicants must provide, including more substantial valuation information.⁹ The expenses incurred complying with the Commission's requirements are inherently part of the process of an acquisition since an acquisition cannot be completed without first meeting them. Thus, the Commission is requiring companies looking to undergo acquisitions or consolidations to undertake substantial compliance costs. In its

⁵ D.99-10-064, *Order Instituting Rulemaking on the Commission's Own Motion to Set Rules and to Provide Guidelines for the Acquisition and Mergers of Water Companies*, Opinion.

⁶ D.99-10-064, Appendix D, Section 2.05

⁷ *Id.*

⁸ *Id.*

⁹ D.20-08-047, *Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low – Income Customers of Investor-Owned Water Utilities, and Affordability*, Decision and Order, pp. 89-93.

application, Suburban provided all of the information required by the Commission in D.99-10-064 and D.20-08-047.

B. Suburban Incurred the Vast Majority of its Transaction Costs Before it Filed its Application

As of the date of this filing, Suburban has incurred \$476,873 in costs related to this transaction. These include the legal costs to prepare and process the application, costs related to due diligence, and the cost to prepare the valuation required by the Commission. Of these, only \$49,045 were incurred after Suburban filed its application. Moreover, prior to filing its application, Suburban incurred \$291,136 in costs specifically for the preparation of the valuation required by the Commission in D.99-10-064 and D.20-08-047.¹⁰ By setting the application date as the effective date of the STMA, however, the Commission has denied Suburban the ability to recover the vast majority of its transaction costs, including these specific compliance costs.

C. All of Suburban's Transaction Costs Meet the Commission's Requirements for Memorandum Accounts

In D.22-04-010, the Commission found that Suburban's request to track transaction costs for future recovery met the Commission's standard for memorandum accounts.¹¹ Specifically, the Commission found that the costs were caused by an event outside of Suburban's control, that they could not have been foreseen in Suburban's previous general rate case and will occur before Suburban's next general rate case, and that the costs "will likely be substantial."¹² Finally, the Commission stated, "Ratepayers will benefit from the memorandum account as it allows for the tracking of costs for future prudence and reasonableness review by

¹⁰ See Attachment 10, Minimum Data Requirements, Question 9.

¹¹ D.22-04-010, p. 27, referring to Standard Practice U-27-W.

¹² *Id.*, p. 27.

the Commission prior to cost recovery.”¹³ The Commission also noted that it had previously authorized similar accounts in other acquisitions.¹⁴

These findings apply to all of Suburban’s transaction costs, not just those it incurred after filing its application. The transaction costs incurred prior to the filing the application were caused by an event outside of Suburban’s control, could not have been foreseen in Suburban’s previous general rate case and occurred before Suburban’s next general rate case, are, as discussed above, substantial, and will provide ratepayer benefit. The Commission should therefore allow Suburban to track these costs in the STMA for future recovery.

D. The Commission Has the Authority to Authorize Suburban to Track All of its Transaction Costs for Future Recovery

In D.22-04-010, the Commission noted that has the authority to set the effective date of a memorandum account prior to the date of issuance of the decision pursuant to Section 1731(a) of the Public Utilities Code.¹⁵ It also cited prior decisions where it has allowed the establishment of memorandum accounts to be effective as of the date of the filing of the

¹³ *Id.*

¹⁴ *Id.*, p. 27, citing D.19-04-015, *Application of California-American Water Company (U210W), Rio Plaza Water Company, Inc. (U319W), and John Chris Nickel, Sr., Trustee for the John C. Nickel Trust for an Order Authorizing the Sale of all Shares of Rio Plaza Water Company, Inc. to California-American Water Company and Approval of Related Matters*, Decision Authorizing Sale and Transfer and D.19-12-038, *Joint Application of California-American Water Company (U210W) and Cook Endeavors d/b/a Fruitridge Vista Water Company (U136W) for an Order Authorizing Cook Endeavors to Sell and California-American Water Company to Purchase the water utility assets of Cook Endeavors*, Decision Authorizing the Purchase of Water Utility Assets by California-American Water Company.

¹⁵ *Id.*, p. 28.

application.¹⁶ The Commission concluded by stating that it was establishing the application date as the effective date of the STMA in order “to avoid any retroactive ratemaking.”¹⁷

The Commission provided no explanation as to why setting the application date as the effective date of the STMA would avoid retroactive ratemaking. Public Utilities Code Section 1731(a) gives the Commission the power to “set the effective date of an order or decision before the date of issuance of the order or decision.”¹⁸ That power necessarily means that any decision utilizing it would have a retroactive effect relative to when the decision was actually issued. Although the Commission in D.22-04-010 draws a distinction between the application filing date and any date before then, Section 1731(a) does not include any limitation as to when the Commission may set the effective date. The California Supreme Court has found that this section permits a Commission decision to have a retroactive effect even though the principles of retroactive ratemaking would otherwise prohibit that effect.¹⁹ As such, setting an effective date to allow Suburban to track all of its transaction costs does not raise retroactive ratemaking concerns any more than does setting the date as of Suburban’s application filing date.

In D.22-04-010, the Commission cited five prior decisions to support the establishment of the memorandum account on the date the application was filed.²⁰ The facts of those

¹⁶ *Id.*, p. 28, citing D.19-09-026, *Application of Pacific Gas and Electric Company for Approval of Memorandum Account to Record and Track Incremental Costs of Implementing California Consumer Privacy Act of 2018. (U39E)*, Decision Authorizing Establishment of California Consumer Privacy Act Memorandum Accounts; D.18-11-051, *Application of Southern California Edison Company (U338E) to Establish the Wildfire Expense Memorandum Account*, Decision Authorizing Southern California Edison Company to Establish a Wildfire Expense Memorandum Account; D.18-06-029, *Application of Pacific Gas and Electric Company for Authority to Establish the Wildfire Expense Memorandum Account. (U39E)*, Alternate Decision Authorizing Establishment of a Wildfire Expense Memorandum Account; D.19-01-019, *Application of Southern California Edison Company (U338E) for Approval of Its Grid Safety and Resiliency Program*, Decision Approving an Effective Date for an Interim Memorandum Account; D.21-02-009, *Order Instituting Rulemaking Regarding Emergency Disaster Relief Program*, Decision Adopting Wireline Provider Resiliency Strategies.

¹⁷ *Id.*, p. 28.

¹⁸ Pub. Util. Code § 1731 (a).

¹⁹ The California Supreme Court has found that this section permits a Commission decision to have a retroactive effect even though the principles of retroactive ratemaking would otherwise prohibit that effect. *City of Los Angeles v. Public Utilities Com.* (1975) 15 Cal.3d 680, 707.

²⁰ D.22-04-010, p. 28 fn. 105.

decisions are distinguishable, however. Importantly, none of the five decisions cited by the Commission involved acquisitions. Additionally, in four of those five decisions, the petitioner only sought an effective date as of the filing of their applications, making those distinguishable from Suburban’s request to have an effective date earlier than its application filing date.²¹ In the one decision where the applicant requested an earlier date, the Commission rejected it based on a lack of precedent and a lack of an adequate justification to depart from precedent.²²

By contrast, the Commission has approved memorandum accounts that allow water utility applicants to track all transaction costs for future recovery. Indeed, the Commission cited two decisions granting such authority, D.19-04-015 and D.19-12-038, as examples of prior memorandum account approval.²³ D.19-04-015 involved an acquisition proceeding in which California-American Water Company sought to establish a memorandum account “to track all transaction-related costs.”²⁴ The Commission found the request consistent with to Commission Standard Practice U-27-W and held the company was “authorized to establish a transactional memorandum account to track all costs resulting from the purchase transaction.”²⁵ In D.19-12-038, the Commission authorized a similar memorandum account for California-American Water Company for a different transaction, noting that it “will permit Cal-Am to provide a detailed accounting of all such costs incurred for the Fruitridge acquisition so that they may be scrutinized.”²⁶ In both instances, the lack of a time-related limitation meant that California-American Water Company was able to track all of its transaction costs, including the costs it incurred prior to filing its applications.

²¹ See D.19-09-026, p. 4; D.18-11-051, p. 8; D.18-06-029, p. 11; and D.19-01-019, p. 2.

²² See D.21-02-009, p. 16.

²³ D.22-04-010, p. 27, fn. 103.

²⁴ D.19-04-015, pp. 3, 34 (emphasis added).

²⁵ *Id.*, p. 35 (emphasis added).

²⁶ D.19-12-038, p. 20 (emphasis added).

This precedent elucidates the point that an acquisition is a unique matter and should be treated accordingly. Due to the timing of when the acquiring company incurs the majority of its expenses, any time limitation will necessarily cut off a substantial portion of those costs. As such, in the acquisition at issue here, the Commission should follow the precedent it set for acquisitions and allow Suburban to track all of its transaction costs.

E. Denying Recovery of the Majority of Transaction Costs Creates a Disincentive Contrary to Public Policy

By prohibiting Suburban from recovering the overwhelming majority of its transaction costs, the Commission disincentivizes Suburban, and all other water systems capable of a transaction like the one at issue in this proceeding, from pursuing consolidations in the future. This is contrary to State and Commission policy supporting the consolidation of small water systems.

The California Legislature has found and declared that (1) public water systems face the need to replace or upgrade infrastructure to meet increasingly stringent state and federal laws and regulations, (2) increasing amounts of capital are required to finance the necessary investment in that infrastructure, (3) scale economies are achievable in the operation of public water systems, and (4) providing water corporations with an incentive to achieve these scale economies provides benefits to ratepayers.²⁷ Similarly, State Water Resources Control Board (“SWRCB”) Resolution No. 2008-0048 states: small water systems (1) often cannot provide the economies of scale necessary to build and maintain adequate water and wastewater systems; (2) lack resources and in-house expertise, including those necessary to best manage long term operations; and (3) need financial and technical assistance to ensure compliance. More recently, in D.20-08-047, the Commission found:

Consolidation has been and continues to be a tool to remedy systems failing water quality health and safety standards. Consolidation may also be a means to improve affordability, by leveraging greater economies of scale and scope, and

²⁷ Pub. Util. Code §2719.

by importing best, or better, practices related to operating a water utility, as well as designing rates to allow recovery of reasonable expenses.²⁸

In approving the current transaction, the Commission noted, “The purchase of Sativa promotes the Commission’s and SWRCB’s goals and directives which encourage the purchase of smaller water utilities.”²⁹ The Commission also concluded that Suburban’s acquisition of Sativa Water furthered the Commission’s Environmental and Social Justice Action Plan goals.³⁰ Indeed, the Commission stated:

Suburban will bring economies of scale, internal expertise, access to resources, and greater knowledge and experience. These will help maintain the highest standards of water quality and improve infrastructure development. Suburban’s size, financial strength, and the breadth of expertise of its employees, allow it to implement strong conservation programs and setting rates that balance investment, conservation, and affordability. In addition, Suburban can spread costs to operate, maintain, and invest over a much larger customer base. Suburban’s resources will be used to improve the water quality and level of customer service in Sativa.³¹

Suburban’s acquisition of Sativa Water is exactly the type of transaction that aligns with Commission and State policy. Despite that, by preventing Suburban from recovering the vast majority of its transaction costs, the Commission disincentivizes Suburban, and other Commission-regulated water utilities from undertaking acquisitions in the future.

III. CONCLUSION

Suburban appreciates the Commission’s timely approval of this transaction, as well as the Commission’s recognition of the transaction’s significant benefits. For the reasons set forth above, Suburban respectfully requests that the Commission grant this Application for Rehearing of D.22-04-010 to correct the error specified herein.

Respectfully submitted,

²⁸ D.20-08-047, p. 85.

²⁹ D.22-04-010, p. 27.

³⁰ Id., p. 36.

³¹ Id., p. 34 (citations omitted).

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